

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL ROOM

In the Matter of)	
)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act)	
— Competitive Bidding for Commercial)	
Broadcast and Instructional Television)	
Fixed Service Licenses)	
)	
Reexamination of the Policy Statement)	GC Docket No. 92-52
on Comparative Broadcast Hearings)	
)	
Proposals to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	
)	

TO: The Full Commission

**COMMENTS OF LAUREN A. COLBY ON BEHALF
OF VARIOUS IDENTIFIED PARTIES**

Lauren A. Colby, on behalf of the parties identified in Exhibit 1, attached, hereby respectfully submits the following comments in this proceeding:

1. Attached and marked Exhibit 1 is a list of persons, each of whom is an applicant to the Federal Communications Commission for a construction permit for a new FM or TV broadcast station. Each application, filed by the parties identified, was filed prior to July 1, 1997. Each application was filed pursuant to a public notice stating that if more than one application was filed

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for the facility in question a hearing would be held to select the winning applicant. Each applicant has invested at least \$7500.00 in legal, engineering, consulting and other expenses associated with its application. Each applicant who has already gone through a comparative hearing has invested at least \$50,000.00 in its application.

2. Now, through the Balanced Budget Act of 1997, the Congress has amended the Communications Act to provide that a winner will be selected by competitive bidding with the proceeds going to the U.S. Treasury. Each of the identified parties hereby objects to the selection of a winner by competitive bidding. Congress and the FCC having initially announced that the winners were to be selected only after a hearing, each of the identified parties is entitled to a hearing. Congress cannot change the rules in the middle of the game. To do so violates the rights of each applicant to due process of law. U.S. v. Winstar Corporation, 116 S.Ct. 2432 (1996). The proposed auction deprives each applicant of its entire investment in its application and constitutes a taking of property without due process, in violation of the "takings clause" of the Fifth Amendment. The mere reimbursement of any government fees, which may have been paid, is wholly insufficient to make the applicant whole; indeed, no sum of money is sufficient to fully compensate an applicant for the loss of its right to a hearing. Finally, each applicant has been deprived of adequate notice and hearing in violation of well-established Constitutional principles.

3. All of the identified parties are in the process of attempting to reach private settlements in their respective comparative proceedings. However, it appears that in each proceeding there is always one other applicant who simply refuses to settle. The comments of the identified parties are

submitted without prejudice to the rights of each party to reach an amicable private settlement should that prove possible.

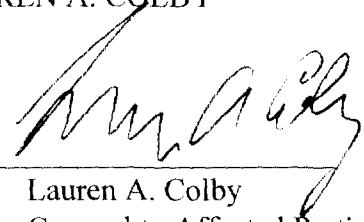
January 6, 1998

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

Respectfully submitted,

LAUREN A. COLBY

By:

A handwritten signature in black ink, appearing to read 'Lauren A. Colby', written over a horizontal line.

Lauren A. Colby
Counsel to Affected Parties

EXHIBIT 1

AFFECTED PARTIES

Thomas F. Beschta
Thomas Bennis
Stacy Brody
William B. Wachter
Michael J. Bennis
James W. Lawson
John D. Strelitz
Innovative Broadcasting Corporation
GNHC, Inc.

William E. Bennis, III
Ronald Bishop
Robert O. Copeland
Hulester Russell
Heidi Damsky
David Hartley
David L. Shepherd
John R. Miller
Straus Communications

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 17 day of January, 1998, to the offices of the following:

Mass Media Bureau
Video Services Bureau
F.C.C.
1919 M Street, N.W.
Room 702
Washington, D.C. 20554

Audio Services Division
F.C.C.
1919 M Street, N.W.
Room 302
Washington, D.C. 20554

Office of General Counsel
F.C.C.
1919 M Street, N.W.
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Traci Maust